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IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-1177

C. MURRAY HENDERSON, Warden
LOUISIANA STATE PENITENTIARY,
Petitioner,

versus

FRANK RECASNER,
Respondent.

Opposition to Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

BRIEF ON BEHALF OF FRANK RECASNER
PETITIONER - APPELLEE

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STATEMENT OF THE CASE

On June 18, 1969, petitioner-appellee appeared in the Criminal District Court for the Parish of Orleans wherein he entered pleas of guilty to three counts of armed robbery and was sentenced to serve a thirty year prison sentence on each count, said sentence to run concurrently. A transcript of these proceedings is set forth on pages 3 and 4 of the brief filed herein by the State of Louisiana.

Thereafter on March 22, 1973, petitioner filed in the United States District Court for the Eastern District of Louisiana a writ of Habeas Corpus seeking to set aside and vacate said sentence on the grounds that at the time of his arraignment and pleas of guilty on June 18, 1969, he was not advised of his constitutional rights as enunciated by *Boykin v. Alabama*, 1969, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274. This issue was presented to the United States District Court on the transcript of the June 18, 1969, arraignment proceedings occurring in the State Court.

The United States District Court granted the writ of Habeas Corpus on the ground that there was no showing, either in the Louisiana Court transcript or otherwise, that prior to pleading guilty Recasner was advised by the trial judge or anyone else of 1) his right to trial by jury, 2) his right to remain silent, 3) his right of confrontation.

ARGUMENT

The sole issue presented in this appeal is whether from a reading of the transcript of the arraignment proceeding occurring on June 18, 1969, in the Criminal District Court for the Parish of Orleans, the State of Louisiana has affirmatively shown that the pleas of guilty entered by Recasner were done in conformity with *Boykin v. Alabama*, supra. An examination of that transcript reveals that at no time did the court or anyone else inform Recasner of his right to a jury trial, his right to remain silent, or his right of confrontation enunciated in *Boykin*. *Boykin* dictates that

the record affirmatively show that a guilty plea was entered freely and voluntarily and with full understanding of the consequences of entering such a plea. A further consequence of any guilty plea is the maximum sentence or punishment that can be imposed. See *McCarthy v. United States*, 394 U.S. 45a (1969) dealing with Rule 11 of the Federal Rules of Criminal Procedure. The record is silent regarding any of such consequences.

CONCLUSION

It is respectfully submitted that the trial transcript of the lower Court proceedings reflect the absence of the Appellee herein, Frank Recasner, being advised of his constitutional rights secured by *Boykin v. Alabama, supra.* Further, that said transcript fails to show that he was advised of the maximum sentence that could be imposed as a consequence of his pleading guilty.

For these reasons, counsel prays that the Judgment of the Fifth Circuit Court of Appeals and of the United States District Court granting Frank Recasner's Petition For Writ of Habeas Corpus be affirmed.

Respectfully submitted,

_____

John C. Ciolino

CERTIFICATE

I certify that a copy of the above and foregoing Brief has been served upon opposing counsel of record by placing the same in the United States mail, postage prepaid, this _____ day of April, 1974.

John C. Ciolino